

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID LEE WOMACK

Plaintiff,

v.

JOSEPH V. SMITH, et al.,

Defendants.

JURY TRIAL DEMANDED

No. 1:CV-06-2348 CCC

Judge Christopher C. Conner

Filed Electronically

**PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS'
MOTION TO AMEND THE CASE MANAGEMENT ORDER**

Plaintiff David Lee Womack opposes Defendants' Motion to Amend the Case Management Order insofar as it seeks to extend all deadlines by 60 days, but he concurs insofar as it seeks to extend all deadlines by 30 days, because Defendants have shown that they need only an additional 30, not 60, days to complete discovery. In support, Mr. Womack, by and through his attorneys, states the following:

1. The current case schedule is set for discovery to close on April 15, 2010. Mr. Womack concurs in extending the close of discovery by 30 days, to May 15. Defendants seek to extend the close of discovery by 60 days, to June 15.

2. On February 28, 2010, Defendants' counsel requested the undersigned's concurrence in (1) a 30-day extension and (2) a withdrawal of all outstanding deposition notices.¹

3. Later that same day, the undersigned concurred in the 30-day extension and agreed to withdraw all deposition notices if this Court granted the extension. The undersigned requested that the parties reschedule all depositions as soon as possible, with a goal of having all depositions scheduled by March 5, 2010. The undersigned also indicated that he preferred to depose Defendants Dodrill, Smith, and Oliver before the end of March, and he provided dates as to his availability to take their depositions.

4. On March 1, 2010, Defendants' counsel requested the undersigned's concurrence in a 60-day extension to give the Defendants "breathing room" because, according to Defendants' counsel, the undersigned needed to take depositions during his trial weeks.

¹ Although it is not directly relevant to the instant Motion, the undersigned strongly disputes Defendants' statement that the undersigned did not consult with Defendants' counsel about his or the deponents' schedules before noticing depositions. Mot. at ¶ 7. To the contrary, the undersigned requested their schedules at least three times: first during a conference call on February 19, 2010; second in an email dated February 23; and third in an email sent before 9 am on February 26. Frustrated by Defendants' failure to respond to his multiple requests, and in light of the fast-approaching discovery deadline, the undersigned issued several deposition notices after 5:30 pm on February 26.

5. Later that same day, the undersigned informed Defendants' counsel that he concurred in a 30-day, but not 60-day, extension, asserting that the undersigned would not need to take depositions during Defendants' counsel's trial weeks and that the depositions of Defendants Dodrill, Smith, and Oliver would be necessary to take at some time in March because their depositions may affect which remaining witnesses, plus or minus the ones already noticed, need to be deposed. In addition, the undersigned noted that the parties can depose the remaining witnesses soon after Defendants' counsel's trials, and that, if it turns out that come mid-April the parties need additional time to complete discovery, they can seek another extension from the Court.

6. In the instant Motion, Defendants argue that seeking a 30-day extension and, if the parties still need additional time to complete discovery, seeking another extension from the Court in mid-April "would not be in the interest of judicial economy because the undersigned would have to file yet another motion and ask for another 30 days based on the above scheduling conflicts." Mot. at ¶ 14.

7. Defendants' argument fails for three reasons.

8. First, Defendants fail to recognize that the last of Defendants' counsel's trials end on or soon after April 14, after which time the parties would have a full 30 days to complete discovery in this case if the Court grants the parties a 30-day extension.

9. Second, Defendants fail to recognize that, come mid-April, the undersigned may concur in seeking an additional 30-day extension based on the apparent scheduling conflicts at that time, thus potentially alleviating the need to file a contested motion.

10. Third, Defendants admit that one or more of Defendants' counsel's cases set for trial may settle, Mot. at ¶ 10, thus potentially alleviating his scheduling conflicts and the need to seek another extension.

11. Granting an extension of time beyond that which Defendants have shown they need to complete discovery would prejudice Womack and unduly delay the Court from promptly handling matters on its docket.

Accordingly, Mr. Womack concurs in an extension of 30, but not 60, days for all case management deadlines in this matter.

Respectfully submitted,

Dated: March 4, 2010

By: /s/ Aaron B. Hewitt

Peter E. Halle
Aaron B. Hewitt
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
202.739.3000
202.739.3001 (fax)

Andrew C. Whitney
MORGAN, LEWIS & BOCKIUS LLP
1701 Market St.
Philadelphia, PA 19103
215.963.5000
877.432.9652 (fax)

Deborah M. Golden
**WASHINGTON LAWYERS COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS**
11 Dupont Circle, NW, Suite 400
Washington, D.C. 20036
202.319.1000
202.319.1010 (fax)

Maxine M. Woelfling
MORGAN, LEWIS & BOCKIUS LLP
17 North Second Street, Suite 1420
Harrisburg, PA 17101-1604
717.237.5000
717.237.5001 (fax)

Attorneys for Plaintiff David Lee Womack

CERTIFICATE OF SERVICE

I, Aaron B. Hewitt, hereby certify that on this 4th day of March, 2010, a copy of PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO AMEND THE CASE MANAGEMENT ORDER was served via electronic court filing on the following party:

Michael Butler
United States Attorney's Office
228 Walnut Street, Suite 220
Harrisburg, PA 17108
Michael.J.Butler@usdoj.gov

/s/ Aaron B. Hewitt